

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

\_\_\_\_\_  
In the Matter of )

Request for Review )  
by Digitcom Services, Inc. )  
of Decision of Universal Service )  
Administrator and )  
Request for Waiver of Twelve-Month )  
Deadline for Downward Adjustment of )  
499A Forms )

CC Docket No. 96-45

Motion for Expedited Review and )  
Waiver of Public Notice Requirement )  
Request to Hold Collections in Abeyance, )  
*Pendente Lite* )

\_\_\_\_\_  
Digitcom Services, Inc. (“Digitcom” or the “Company”), by its undersigned attorney, hereby requests the Commission review a decision by the Administrator of the Universal Service Fund, pursuant to Section 54.719(c) of the Commission’s Rules. 47 CFR §54.719(c) (2009). Specifically, Digitcom requests that the Commission reverse the Administrator’s decision and grant Digitcom a waiver of the twelve-month downward revision deadline with respect to 499A forms that were filed several years late by Digitcom in a good faith attempt to become compliant with filing requirements, but that contained errors resulting in significant Universal Service Fund charges the Company is unable to pay. Because the original 499A forms were filed after the twelve-month revision deadline, without a waiver that deadline effectively prevents Digitcom from receiving any opportunity to amend the erroneous forms.

The Company further moves for expedited review by the Commission of this appeal, and a waiver of the public notice requirement associated with the Commission's review of a decision by the Administrator of the Universal Service Fund. The Company also requests that the Commission hold collections in abeyance pending action on this appeal, and waive any late fees or penalties associated with a failure by the Company to pay the Universal Service charges assessed solely with respect to the errors in the 499A filings that are the subject of this appeal.

In support of this appeal, Digitcom states the following:

### **OVERVIEW**

1. Digitcom Services, Inc. is a corporation incorporated under the laws of California. The Company obtained a 499 filer identification number (817130) from the Universal Service Administrative Company in 2001 and filed the 2002 499A and 2003 499A, but did not file subsequent Form 499A Annual Reports until September, 2008.

2. In September, 2008, the Company realized its error in failing to file Form 499A Annual Reports and filed a 2004 499A, 2005 499A, 2006 499A, 2007 499A and 2008 499A. The filings resulted in Universal Service Fund assessments for the 2004, 2005, 2006 and 2007 499A reports totaling \$805,283.52.<sup>1</sup> The reports were prepared by Company personnel in a good faith attempt to comply with the Commission's rules. However, the 499A reports contained significant errors that overstated revenue subject to the Universal Service Fund assessment. Exhibit 1 contains a complete list of the errors and the reasons therefor.

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<sup>1</sup> Ironically, the Universal Service Administrative Company (USAC) had independently estimated earlier that Digitcom was *de minimis* for the years covered by this appeal and did not assess any charges on Digitcom. It was Digitcom's good faith efforts to fully comply with all 499A filing requirements that led to its erroneous filings which resulted in too much Universal Service Fund assessments, as opposed to the too-little estimated by USAC.

3. With the help of consultants, Digitcom filed revised and corrected 499A forms containing downward adjustments on February 27, 2009, for each of the years referenced above.<sup>2</sup> The net effect of the adjustments to the 2004, 2005, 2006 and 2007 499A reports would be a total reduction in the Universal Service Fund contribution of \$724,430.03, resulting in a revised Universal Service Fund assessment of \$80,853.49. The revised forms were filed within one year after the original Forms 499A were filed, but well beyond 12 months from the date they were originally due.

4. The Universal Service Fund Administrator rejected the revised forms as late-filed, and, on appeal, affirmed that decision solely on the technical basis that the one-year period for revisions to 499A forms had passed – even though it had passed long before Digitcom filed the original, and erroneous, version of the 499A forms.<sup>3</sup>

5. The facts above present the unique situation where a contributor filed the original Form 499A after the twelve-month deadline for revisions had passed and then had no opportunity to revise its filing to correct errors. In the instant case, the errors resulted in significant Universal Service Fund charges that the Company is unable to pay, and it has been unable to obtain relief through the Universal Service Fund Administrator. See Affidavit in Exhibit 2.

## **DISCUSSION**

6. In its 2004 Order, the Commission established a twelve-month revision window to permit contributors to revise Form 499A filings for downward adjustments.<sup>4</sup>

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<sup>2</sup> Revisions to the 2008 499A were accepted and a waiver is not required for that filing.

<sup>3</sup> Letter from Universal Service Administrative Company to Mr. Steven Hamilton, Digitcom Services, Inc., dated November 6, 2009.

<sup>4</sup> *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service*,

The Commission stated, “In our experience, twelve months is a sufficient period of time for contributors to revise their 499-A filings for the purpose of reducing their contribution obligations.” *Revision Deadline Order* at ¶ 11 . In the Revision Deadline Order, however, the Commission addressed only circumstances where contributors had timely filed the underlying Form 499A. Accordingly, the Revision Deadline Order specifies a fixed date of March 31 of the following year as the last date on which downward revisions may be filed. *Revision Deadline Order* at ¶ 10.

7. In the instant case, Digitcom did not file the 499A forms by their respective applicable filing dates, and in fact, filed the initial 499As well beyond the twelve-month revision window as well. While the late filing of the forms is not excusable, Commission Rules provide the appropriate penalty for the late filing.<sup>5</sup>

8. Digitcom was aware of the penalty for late filing and filed the forms in a good faith attempt to become fully compliant with Commission Rules. Having made errors on the initial filing, however, with no opportunity to revise the forms to correct the errors, Digitcom is now subject to late filing penalties, fees on overstated revenue in the forms, and penalties on the errors as well. The net effect of Digitcom’s apparently irremediable error is \$724,430.03 in additional fees and penalties (not including interest and penalties), approximately nine times what it would have owed with correct filings.

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*North American Numbering Plan, Local Number Portability and Universal Service Support Mechanisms, Changes to the Board of Directors of the National Exchange Carrier Associations, Inc.*, Order, DA 04-3669, 20 FCC Rcd 1012, ¶ 10 (2004) (*Revision Deadline Order*).

<sup>5</sup> See *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration and Oversight, Federal State Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link Up, Changes to the Board of Directors for the National Exchange Carriers Association, Inc.*, Report and Order, FCC 07-150 (2007).

Applying the twelve-month rule as meaning only March 31 of the year after the forms were due resulted in an overwhelming and inappropriate sanction on Digitcom.

9. Section 1.3 of the Commission's rules provides that waiver of a rule may be granted upon "good cause shown."<sup>6</sup> Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.<sup>7</sup> The Commission may exercise its discretion to waive a rule "only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."<sup>8</sup> The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy.<sup>9</sup>

10. Digitcom submits that waiver of the twelve-month downward adjustment deadline is appropriate in the instant case because Digitcom was attempting in good faith to comply with the Commission's rules in filing all outstanding 499A forms, albeit late. The errors made on the initial 499A filings were inadvertent and largely relate to confusing interstate with intrastate revenues on the form, as well as certain other errors pertaining to inadequate caller ID information and stale LERG data. Digitcom filed amended 499A forms within about five months of the initial filing and fully described the nature and amount of the errors. Without a waiver, the errors made on the initial filings will result in contribution amounts and taxes that Digitcom is unable to pay.<sup>10</sup>

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<sup>6</sup> 47 C.F.R. § 1.3.

<sup>7</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

<sup>8</sup> *Northeast Cellular Telephone v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>9</sup> *WAIT Radio*, 418 F.2d at 1159.

<sup>10</sup> Indeed, Digitcom has been unable to comply with the general "pay and dispute" policy of the Commission and an adverse ruling in this matter will result in Digitcom's bankruptcy. See Affidavit in Exhibit 2. Cf. *Aventure Communications Technology, LLC, Form 499 Filer ID: 825749 Request for*

11. Digitcom's circumstances are also unique and warrant a deviation from the general twelve-month rule. Such a deviation would serve the public interest by acknowledging Digitcom's good faith attempts to bring itself into full compliance with Commission Rules and encourage similarly-situated carriers to come forward. If the Commission rules against Digitcom in this case, the ruling could have a chilling effect on carriers that would like to become compliant but fear the inability to remedy errors on voluntary disclosures. Likewise, consultants and others that assist carriers with coming into full compliance may be reluctant to assist with filings to be made after the twelve-month revision deadline has passed because with large amounts of money potentially at stake, the inability to amend a filing within a reasonable time may result in liability.

12. The Commission's policy in establishing the twelve-month deadline is to improve the administrative efficiency and certainty for the contribution systems and to ensure the stability and sufficiency of the federal universal service fund. *Revision Deadline Order* at ¶ 10. Granting a waiver in the limited circumstances presented here, for the good cause shown by Digitcom, is in the public interest and will not frustrate the Commission's purposes in establishing the twelve-month deadline.

### **MOTIONS AND REQUESTS**

13. The Company has also moved in this pleading for expedited review by the Commission of this appeal, and a waiver of the public notice requirement associated with the Commission's review of a decision by the Administrator of the Universal Service Fund. The Company requested that the Commission hold collections in abeyance pending action on this appeal, and waive any late fees or penalties associated with a

failure by the Company to pay the Universal Service charges assessed solely with respect to the errors in the 499A filings that are the subject of this appeal. In support of such motions and requests, Digitcom submits the facts set forth in paragraphs 1-12, *supra*, as demonstrating material hardship to Digitcom and a manifest need for expedited review by the Commission and the waivers sought herein.

### **CONCLUSION**

WHEREFORE, Digitcom Services, Inc. requests the Commission:

1. GRANT Digitcom's request for expedited review of this appeal; and
2. WAIVE the public notice requirement associated with the Commission's review of a decision by the Administrator of the Universal Service Fund; and
3. GRANT Digitcom's request that the Commission hold collections in abeyance pending action on this appeal; and
4. REVERSE the decision of the Universal Service Fund Administrator and GRANT A WAIVER of the twelve-month downward revision deadline to permit Digitcom to file its amended 499A forms for the years 2004, 2005, 2006 and 2007; and
5. GRANT Digitcom's request to waive any late fees or penalties associated with a failure by the Company to pay the Universal Service charges assessed solely with respect to the errors in the 499A filings that are the subject of this appeal.

Respectfully submitted,



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(410) 349-4990

**Exhibit 1****Explanation of correct and incorrect items in Original Filing Versus Revised Filing:**

<b>YEAR 2004</b>	<b>Total</b>	<b>Intrastate</b>	<b>Interstate</b>	<b>international</b>
<i>Digitcom Original Report</i>	<i>\$2,091,679.62</i>	<i>\$1,840,678.07</i>	<i>\$146,417.57</i>	<i>\$104,583.98</i>
<b>Original Filing - September 11, 2008</b>	<b>\$2,091,679.62</b>	<b>\$146,417.57</b>	<b>\$1,840,678.07</b>	<b>\$104,583.98</b>
Problem 1A: Transcribing Error		(\$146,417.57)	\$146,417.57	
Problem 1B: Transcribing Error		\$1,840,678.07	(\$1,840,678.07)	
Problem 2: LERG Not Properly Updated		\$6,679.15	(\$6,679.15)	
Problem 3: Improper Caller ID on incoming local calls made it look as international calls		\$47,678.55		(\$47,678.55)
<b>Revised Filing - February 26, 2009</b>	<b>\$2,091,679.62</b>	<b>\$1,895,035.09</b>	<b>\$139,738.42</b>	<b>\$56,905.43</b>

<b>YEAR 2005</b>	<b>Total</b>	<b>Intrastate</b>	<b>Interstate</b>	<b>international</b>
<i>Original Report</i>	<i>\$2,438,835.06</i>	<i>\$2,143,534.85</i>	<i>\$0.00</i>	<i>\$295,300.21</i>
<b>Original Filing</b>	<b>\$2,438,835.06</b>	<b>\$295,300.21</b>	<b>\$2,143,534.85</b>	<b>\$0.00</b>
Problem 1B: Transcribing Error		\$2,143,534.85	(\$2,143,534.85)	
Problem 1C: Transcribing Error International Calls entered as Intrastate calls		(\$295,300.21)		<b>\$295,300.21</b>
Problem 3: Improper Caller ID on incoming local calls made it look as international calls		\$233,157.16		(\$233,157.16)
Problem 4: LERG Database is Off Line		(\$140,793.65)	\$140,793.65	
<b>Revised Filing</b>	<b>\$2,438,834.37</b>	<b>\$2,235,898.36</b>	<b>\$140,792.96</b>	<b>\$62,143.05</b>

<b>YEAR 2006</b>	<b>Total</b>	<b>intrastate</b>	<b>Interstate</b>	<b>international</b>
<i>Digitcom Original Report</i>	\$3,367,855.97	\$2,795,320.45	\$0.00	\$572,535.51
<b>Original Filing - September 11, 2008</b>	<b>\$3,367,855.97</b>	<b>\$0.00</b>	<b>\$2,795,320.45</b>	<b>\$572,535.51</b>
Problem 1B: Transcribing Error		\$2,795,320.45	(\$2,795,320.45)	
Problem 3: Improper Caller ID on incoming local calls made it look as international calls		\$498,883.32		(\$498,883.32)
Problem 4: LERG Database is Off Line		(\$181,462.60)	\$181,462.60	
<b>Revised Filing - February 26, 2009</b>	<b>\$3,367,855.78</b>	<b>\$3,112,740.99</b>	<b>\$181,462.60</b>	<b>\$73,652.19</b>

<b>YEAR 2007</b>	<b>Total</b>	<b>intrastate</b>	<b>Interstate</b>	<b>international</b>
<i>Digitcom Original Report</i>	\$1,281,029.05	\$1,068,510.01	\$0.00	\$212,519.04
<b>Original Filing - September 11, 2008</b>	<b>\$1,281,029.05</b>	<b>\$0.00</b>	<b>\$1,078,511.01</b>	<b>\$212,519.04</b>
Problem 5: Summation Error: Interstate +International does not equal total.			(\$10,001.00)	
Problem 1B: Transcribing Error		\$1,068,510.01	(\$1,068,510.01)	
Problem 3: Improper Caller ID on incoming local calls made it look as international calls		\$179,264.58		(\$179,264.58)
Problem 4: LERG Database is Off Line		(\$81,989.24)	\$81,989.24	
<b>Revised Filing - February 26, 2009</b>	<b>\$1,281,028.52</b>	<b>\$1,165,784.85</b>	<b>\$81,989.21</b>	<b>\$33,254.46</b>

**Exhibit 2**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

_____	)	
In the Matter of	)	
	)	
Request for Review	)	
by Digitcom Services, Inc.	)	
of Decision of Universal Service	)	
Administrator and	)	
Request for Waiver of Twelve-Month	)	
Deadline for Downward Adjustment of	)	CC Docket No. 96-45
499A Forms	)	
	)	
Motion for Expedited Review and	)	
Waiver of Public Notice Requirement	)	
	)	
Request to Hold Collections in Abeyance,	)	
<i>Pendente Lite</i>	)	
	)	
_____	)	

**AFFIDAVIT OF STEVE HAMILTON**

I, Steve Hamilton, do hereby declare and affirm, under the penalties of perjury, that the contents of this Affidavit are true and complete to the best of my knowledge, information and belief.

1. I am over eighteen (18) years of age and am competent to testify as to the matters stated herein.
2. I have personal knowledge of the facts set forth herein.
3. I am the CEO of Digitcom Services, Inc.
4. I do hereby restate and reallege each and every allegation and statement of fact contained in the Request for Review by Digitcom Services, Inc. of the Decision of

the Universal Service Administrator captioned above and pending before the Commission.

5. Further, affiant sayeth naught.

AFFIANT:

Steve Hamilton

### ACKNOWLEDGMENT

State of California  
County of Los Angeles } ss.

On January 4, 2010 before me, Michael L. Covey, Notary Public,  
Notary Public, personally appeared \_\_\_\_\_

Steve Hamilton

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(seal)